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**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Consider the  
Adoption of a General Order and Procedures  
to Implement the Digital Infrastructure and  
Video Competition Act of 2006.

R.06-10-005

**REPLY COMMENTS OF**

**CALAVERAS TELEPHONE COMPANY (U 1004 C)  
CAL-ORE TELEPHONE CO. (U 1006 C)  
DUCOR TELEPHONE COMPANY (U 1007 C)  
FORESTHILL TELEPHONE CO. (U 1009 C)  
GLOBAL VALLEY NETWORKS, INC. (U 1008 C)  
HAPPY VALLEY TELEPHONE COMPANY (U 1010 C)  
HORNITOS TELEPHONE COMPANY (U 1011 C)  
KERMAN TELEPHONE CO. (U 1012 C)  
PINNACLES TELEPHONE CO. (U 1013 C)  
THE PONDEROSA TELEPHONE CO. (U 1014 C)  
SIERRA TELEPHONE COMPANY, INC. (U 1016 C)  
THE SISKIYOU TELEPHONE COMPANY (U 1017 C)  
VOLCANO TELEPHONE COMPANY (U 1019 C)  
WINTERHAVEN TELEPHONE COMPANY (U 1021 C)**

**ON PROPOSED DECISION OF COMMISSIONER CHONG  
RESOLVING ISSUES IN PHASE II**

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September 18, 2007

## **I. INTRODUCTION.**

Pursuant to Rule 14.3 of the California Public Utilities Commission's Rules of Practice and Procedure ("Commission"), Calaveras Telephone Company (U 1004 C), Cal-Ore Telephone Co. (U 1006 C), Ducor Telephone Company (U 1007 C), Foresthill Telephone Co. (U 1009 C), Global Valley Networks, Inc. (U 1008 C), Happy Valley Telephone Company ( U 1010 C), Hornitos Telephone Company (U 1011 C), Kerman Telephone Co. (U 1012 C), Pinnacles Telephone Co. (U 1013 C), The Ponderosa Telephone Co. (U 1014 C), Sierra Telephone Company, Inc. (U 1016 C), The Siskiyou Telephone Company (U 1017 C), Volcano Telephone Company (U 1019 C), and Winterhaven Telephone Company (U 1021 C) (the "Small LECs") hereby offer this reply to the opening comments on the Proposed Decision of Commissioner Chong Resolving Issues in Phase II ("Proposed Decision").

As stated in the Small LECs' opening comments, the Proposed Decision improperly applies the build-out and non-discrimination requirements under Public Utilities Code Sections 5890(b) and 5890(e) to smaller video providers. The Proposed Decision would also expand the reporting requirements under the Digital Infrastructure and Video Competition Act of 2006 ("DIVCA") beyond their intended scope. These aspects of the Proposed Decision should be revised to remove the pre-qualification procedure regarding smaller providers' build-out, and to adopt a reasonable "safe harbor" for these providers that is less onerous than the standard under Section 5890(e). Section 5890(b) was never intended to apply to smaller providers, and specific non-discrimination requirements beyond the general standard under Section 5890(a) are clearly contrary to Legislative intent. The consumer groups' and CCTA's arguments in support of these standards cannot cure these clear errors in the Proposed Decision.

The opening comments contain several proposals that would expand reporting requirements and build-out standards even beyond the Proposed Decision's approach. As set

forth below, these proposals are even further removed from any statutory basis, and should be rejected.

## **II. THE PROPONENTS OF THE PROPOSED DECISION'S BUILD-OUT AND LOW-INCOME PENETRATION REQUIREMENTS CANNOT BOLSTER THE STATUTORY INADEQUACY OF THE PROPOSED DECISION'S APPROACH.**

CCTA and several consumer groups offer general policy arguments in favor of the Commission's extension of the large ILECs' low-income penetration quotas and build-out requirements to smaller video providers. *See, e.g., Greenlining Opening Comments*, at p. 2; *CCTPG/LIF Opening Comments*, at p. 1; *CCTA Opening Comments*, at p. 1. A common refrain in these comments is the same build-out standards should apply to video providers regardless of their size. Even if these arguments were founded on reasonable policy grounds, which they are not, none of these parties' opening comments address how the Proposed Decision's approach can be squared with the language and intent of DIVCA.

As the Small LECs' opening comments demonstrate, the Legislature intended to treat smaller providers differently than the larger providers in the application of non-discrimination and build-out requirements. Verizon and AT&T are subject to specific low-income penetration requirements under Public Utilities Code Section 5890(b). Neither the Proposed Decision nor any of the opening comments can point to a statutory basis for extending these requirements to smaller providers. Further, as AT&T's opening comments emphasize, the Commission has no general regulatory authority to develop new requirements for video providers, except as specifically authorized by DIVCA. *AT&T Opening Comments*, at pp. 2-3. DIVCA provides no authorization for the Proposed Decision's application of Section 5890(b) to smaller providers. Indeed, Greenlining's comments appear to recognize that this would be an "extension" of the low-income benchmarks. *Greenlining Opening Comments*, at p. 2 (noting support for the "Proposed Decision's extension of Pub. Util. Code § 5890(b)'s benchmarks . . . to video franchise

holders with fewer than one million telephone subscribers."). The Section 5890(b) standards were never intended to apply to smaller providers. If the Legislature had intended a different result, it would have written the statute differently.

It is also clear that the Legislature intended to provide additional flexibility to smaller providers in building out their video footprints. As discussed in the Small LECs' opening comments, smaller providers should not be subject to the same "safe harbor" standards as apply to AT&T and Verizon under Public Utilities Code Section 5890(e). The Legislature never intended that smaller providers would be required to proactively demonstrate the reasonableness of their build-out plans.

DRA's proposal to require "public/community hearings" for build-out extension and exemption requests would further exacerbate the Proposed Decision's deviation from Legislative intent. *DRA Opening Comments*, at p. 3. Particularly if the Commission implements a pre-qualification procedure for smaller providers to show that their build-out is reasonable, the Commission should ensure that ample "safe harbors" exist, and that regulatory barriers to receiving extensions and exemptions from build-out requirements are removed.

### **III. THE CONSUMER GROUP PROPOSALS FOR ADDITIONAL REPORTING REQUIREMENTS DEVIATE EVEN FURTHER FROM STATUTORY INTENT THAN THE PROPOSALS IN THE PROPOSED DECISION.**

As each of the carriers' opening comments on the Proposed Decision demonstrated, the Proposed Decision's additional reporting requirements are not necessary for the Commission to discharge its duties under DIVCA. The Small LECs join in the comments of AT&T, Verizon, and SureWest on this issue. The Commission has only a very limited scope of authority under which it may regulate video providers, and the proposed expansions upon the statutory reporting requirements in the Proposed Decision contravene that authority. For similar reasons, the Commission should reject consumer group proposals that would expand the Commission's

reporting authority even further. *See, e.g. TURN Opening Comments*, at pp. 2-4; *Greenlining Opening Comments*, at pp. 3-5; *LIF / CCTPG Opening Comments*, at pp. 2-4.

#### IV. CONCLUSION.

For the reasons stated above, the Commission should not apply the Section 5890(c) and 5890(e) standards to smaller video providers. The Commission should also reject consumer group proposals to adopt unnecessary extra-statutory reporting requirements. The Small LECs urge the Commission to remove the low-income penetration quota from the Proposed Decision, as well as the pre-qualification procedure for build out.

Dated this 18th day of September, 2007, at San Francisco, California.

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CERTIFICATE OF SERVICE

I, Noel Gielegthem, declare:

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is COOPER, WHITE & COOPER LLP, 201 California Street, 17<sup>th</sup> Floor, San Francisco, CA 94111.

On September 18, 2007, I served the

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by sending via e-mail a true and correct copy in Adobe Acrobat PDF searchable format to the parties on the CPUC's service list for Proceeding No. R. 06-10-005 who provided e-mail addresses.

Hard copies were served via U.S. Mail on the two parties on the service list who did not provide an e-mail address. Hard copies were also mailed Assigned ALJ Kotz and to Jane Whang, Advisor to Assigned Commissioner Chong.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 18, 2007, at San Francisco, California.

  
Noel Gielegthem

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